

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

M&M FOOD VENDING, INC.  
Respondents

Case No.: I-00-70243  
I-00-70151

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**FINAL ORDER**

**I. Introduction**

On February 22, 2001, the Government served a Notice of Infraction upon Respondent M&M Food Vending, Inc. alleging that it violated 23 DCMR 3012.1, which requires persons engaged in the operation of restaurants, delicatessens or catering businesses to take all necessary precautions to keep the premises free from rats and vermin. The Notice of Infraction alleged that the violation occurred on February 7, 2001 at 1714 14<sup>th</sup> Street, N.W., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on March 19, 2002, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$1,000 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

On March 27, 2001, before the Government served the second Notice of Infraction, Respondent filed an untimely answer with a plea of Deny, and I issued an order setting a hearing on April 25, 2001.<sup>1</sup> Josiah Akintoye, the inspector who issued the Notice of Infraction, appeared on behalf of the Government, and Mushfiquir Khan, owner of Respondent M&M Food Vending, Inc., appeared on its behalf. At the hearing, Respondent moved to change its plea to Admit with Explanation, and I granted that motion.

## **II. Summary of the Evidence**

Mr. Khan offered two explanations for the violation. First, he stated that the inspector had issued a summary suspension of his license on February 7, 2001, the date of the infraction, and that he did not realize that he also would be fined. Second, he stated that his building is susceptible to rat infestation because it is old. Mr. Khan also stated that he now has contracted with a new pest control service, which treats his premises twice a month.

Mr. Khan also asserted that the door to his business is located in the back of 1714 14<sup>th</sup> Street, N.W., and that he often does not get his mail because the Postal Service leaves it with the business located in the front of the building. He stated that he answered the first Notice of Infraction after receiving a copy of it from the Clerk's Office with the March 19 Order. After the hearing, the Government filed the certified mail envelope in which the first Notice of Infraction had been enclosed.<sup>2</sup> The Postal Service returned that envelope to the Government marked "AUK," which I understand to mean "addressee unknown."

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<sup>1</sup> The Government subsequently served a second Notice of Infraction. In light of Respondent's prior filing of an answer, the second Notice of Infraction will be dismissed as moot.

<sup>2</sup> That envelope has been marked Petitioner's Exhibit 103 and is hereby admitted into evidence.

### **III. Findings of Fact**

Respondent operates a delicatessen and food vending facility located at 1714 14<sup>th</sup> Street, N.W. Respondent's plea of Admit with Explanation establishes that, on February 7, 2001, it did not take all necessary precautions to keep its premises free from rats and vermin. After issuance of the Notice of Infraction, Respondent signed a contract with a new pest control service, which has improved conditions in its establishment.

The entrance to Respondent's business is located in the rear of the building at 1714 14<sup>th</sup> Street, N.W. Respondent did not receive the first Notice of Infraction, as the Postal Service did not deliver it. Instead, it returned the Notice of Infraction to the Government, erroneously believing that Respondent's business was not located there.

### **IV. Conclusions of Law**

The rule at issue provides:

All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin.

23 DCMR 3012.1

Respondent's plea of Admit with Explanation establishes that it violated § 3012.1 on February 7, 2001. The Rodent Control Act of 2000 classified a violation of § 3012.1 a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.<sup>3</sup> 16 DCMR 3201. Respondent's claim that the building is old and susceptible to infestation by rats does not warrant

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<sup>3</sup> The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 3012.1. 47 D.C. Reg. at 6339 (August 11, 2000).

a suspension or reduction of the fine. Section 3012.1 is an important public health measure, intended to safeguard the patrons of Respondent's establishment, as well as those who live and work nearby. Rats in a food establishment present a serious problem that must be addressed, regardless of the age of the building. Thus, Respondent's explanation evidences a failure to accept responsibility for the infraction. Nor does Respondent's misunderstanding about whether he would be fined in addition to the summary suspension of his license provide any basis for reducing the fine. As noted above, the Council has determined that violations of § 3012.1 are punishable by a \$1,000 fine, and the legislation contains no exception for food establishments whose licenses have been suspended. Respondent's efforts to correct the violation warrant some reduction in the fine amount, however. Accordingly, the fine will be reduced to \$875.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondent has demonstrated good cause for its untimely answer. The evidence establishes that Respondent did not receive the first Notice of Infraction due to the Postal Service's error. Respondent will not be penalized for failing to answer a Notice of Infraction that, through no fault of its own, it did not receive. *DOH v. Galeano's Trucking*, OAH No. I-00-11097 at 5 (Final Order, April 22, 2002).

**V. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_  
day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a total of **EIGHT HUNDRED FIFTY DOLLARS (\$850)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED 06/14/02**

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John P. Dean  
Administrative Judge